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No. 95-63

In the Supreme Court of the United States

OCTOBER TERM, 1995

LTV STEEL COMPANY, INC., ET AL., PETITIONERS

v.

SHIRLEY CHATER,
COMMISSIONER OF SOCIAL SECURITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner's obligation to finance a trust funding health benefits for retired coal miners, imposed by the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701-9722 (Supp. IV 1992), is a dischargeable pre-petition claim in bankruptcy, even though the statute was enacted more than five years after petitioner commenced chapter 11 bankruptcy proceedings.

2. Whether the Coal Industry Retiree Health Benefit Act of 1992 violates the separation of powers doctrine.

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[1] The responsibilities of the Secretary of Health and Human Services under the Coal Act have been transferred to the Commissioner of Social Security, effective March 31, 1995. See Social Security Independence and Program Improvements Act of 1994 (1994 Act), Pub. L. No. 103-296, §§ 105(a)(1) and (2)(A), 108(h)(9)(A) and (B), 110(a), 108 Stat. 1472, 1487-1488, 1490. In accordance with Section 106(d) of the 1994 Act, the Commissioner of Social Security is substituted for the Secretary of Health and Human Services as a party in this case. 108 Stat. 1477; see also Sup. Ct. R. 35.3.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A44) is reported at 53 F.3d 478. The opinion of the district court rejecting petitioner's[2] constitutional claims and granting summary judgment to respondents (Pet. App. B1-B18) is reported at 163 B.R. 955. The opinion of the district court holding that petitioner's statutory obligations are not dischargeable pre-petition claims and denying petitioner's motion for partial summary judgment (Pet. App. C1-C15) is reported at 154 B.R. 416.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 1995. The petition for a writ of certiorari was filed on July 14, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.* (Supp IV 1992) (Coal Act or Act), was enacted in response to a crisis in health care costs in the coal industry. A brief review of the industry's pre-existing health benefits system is necessary to an understanding of the Act.

For more than 40 years, the United Mine Workers of America and bituminous coal operators have executed a series of national collective bargaining agreements known as National Bituminous Coal Wage Agreements (NBCWAs). Those agreements have governed the terms and conditions of employ-

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[2] Petitioners are the LTV Steel Company, Inc., and three of its wholly owned subsidiaries. Pet. App. A2. The issues with regard to all four petitioners are the same. We therefore refer to them in the singular, as did the court of appeals.

ment in coal mines operated by the members of the Bituminous Coal Operators Association (Association) and other operators who were not members of the Association but who agreed to be bound by the terms of the agreements. Successive NBCWAs established a multi-employer benefit fund that provided lifetime health benefits for active and retired miners. The fund was financed by contributions from mine operators, based on tons of coal mined during the term of each agreement. See Pet. App. A4-A5.

In 1974, the original fund was divided into four separate multi-employer funds, including the UMWA 1950 Benefit Plan and Trust (1950 Plan) and the UMWA 1974 Benefit Plan and Trust (1974 Plan). The 1950 Plan provided lifetime health benefits to miners who retired before January 1, 1976, and their dependents. The 1974 Plan provided lifetime health benefits to miners who retired on or after January 1, 1976, and their dependents. Pet. App. A6-A7.

In 1978, the United Mine Workers and the Association established a new structure for funding retiree health benefits. Under the new system, the 1950 Plan continued to provide health benefits to miners who retired before 1976, but the 1974 Plan was restricted to cover only "orphan" post-1975 retirees, *i.e.*, those whose employer was no longer in business. All other post-1975 retirees were thereafter to receive benefits from individual coal mine operators' employer plans, which were to be established and financed by the signatory coal mine operators. Pet. App. A7.

The 1978 and successor NBCWAs contained a "guarantee" clause, which provided that "the Employers hereby agree to fully guarantee" the health benefits provided by the 1950 and 1974 Plans. They

also included an "evergreen" clause, which required every signatory coal operator who ever made contributions to the Plans to continue to do so at the rate specified in the current NBCWA, whether or not the operator signed that agreement, as long as the operator remained in business. Pet. App. A8-A9. Thus, "[petitioner] was signatory to a series of NBCWAs that included language that gave retired coal miners a legitimate expectation of lifetime health benefits," *id.* at A26, and petitioner "joined in the mining industry's collective assumption of responsibility for the 'orphaned' retirees' benefits," *id.* at A22.

2. By the late 1980s, the financial stability of the retiree health benefit structure in the 1978 NBCWA and successor agreements had been seriously undermined by several developments. First, "as throughout American industry, the costs of health care rose steeply." Pet. App. A11. Second, structural changes in the coal industry caused substantial reductions in both the number of mine operators that were signatories to the NBCWAs and the number of active miners employed by signatory operators. Third, several employers (including petitioner) that ceased coal mine operations successfully contended in court that their obligation to provide health benefits to their retired employees ceased with the expiration of the last NBCWA they signed, and that the 1974 Plan was responsible for their retirees' medical benefits. *Id.* at A11-A12; see *id.* at D1-D13. As a result, a smaller number of signatory operators and active miners were forced to bear the growing costs of providing benefits to an increasing number of beneficiaries of the 1950 and 1974 Plans, see *id.* at A9-A10, and petitioner "succeeded in unloading its share of

the cost of health benefits for the truly 'orphaned' retirees," *id.* at A12.

After a protracted strike against the Pittston Coal Company, in which health benefits were a major issue, and an investigation by a commission appointed by the Secretary of Labor into the coal industry health care crisis, Congress enacted the Coal Act to "provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans." Energy Policy Act of 1992, Pub. L. No. 102-486, Tit. XIX, Subtit. C, § 19142(b)(3), 106 Stat. 3037. In enacting the Coal Act, Congress essentially removed the subject of health benefits for retirees from the collective bargaining process and dealt with it legislatively instead. Congress found that the existing structure for retiree health benefits should be modified to "identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees." § 19142(a)(2), 106 Stat. 3037.

The Coal Act rests on the principle that each signatory coal mine operator should bear the cost of providing benefits to its own retirees and should share in the industry-wide cost of providing benefits to "orphan" retirees. To those ends, the statute creates a new United Mine Workers of America Combined Benefit Fund (Combined Fund) as successor to the 1950 and 1974 Plans, and directs the Secretary of Health and Human Services to match the Combined Fund beneficiaries with operators that employed them. 26 U.S.C. 9706(a) (Supp. IV 1992). If the operator is no longer in business, liability for its beneficiaries passes to certain "related persons," if such persons exist. 26 U.S.C. 9706(a), 9701(c)(2) (Supp. IV

1992). Each operator must pay an annual premium to the Combined Fund, equal to the cost of providing benefits to its assigned beneficiaries and its *pro rata* share of the unassigned (or "orphan") beneficiaries. 26 U.S.C. 9704(a) and (b) (Supp. IV 1992).

3. Petitioner filed a chapter 11 bankruptcy petition in 1986 and, through litigation, successfully avoided an obligation to provide health care benefits to its retired mine workers after the expiration of the 1984 NBCWA, in 1988. Pet. App. A11. After the passage of the Coal Act in 1992, petitioner brought this action seeking declaratory and injunctive relief against enforcement of the Act's funding obligations to it. Petitioner contended that its Coal Act obligation to finance the Combined Fund was, in effect, an untimely "claim" against it in the bankruptcy case based on conduct occurring before the filing of the bankruptcy petition. See *id.* at C5 ("Thus, the question is whether the Combined Fund had a 'claim' before the petition was filed."). Petitioner also contended that the Coal Act violates the Due Process and Just Compensation Clauses of the Fifth Amendment.

The district court denied petitioner's motion for partial summary judgment based on the allegedly untimely claim, concluding that petitioner's liability under the Coal Act arose after the petition was filed, and therefore is not barred as a pre-petition claim. "[W]here there is no legal relationship defined at the time of the petition," held the court, "it would be impossible to find even the remotest 'right to payment.' * * * Claims under the Coal Act were not in any sense 'contingent' or 'unmatured' at the time of the petition; they simply did not exist. There is no basis for terming these claims pre-petition." Pet. App. C5-C6. The district court also rejected peti-

tioner's Fifth Amendment arguments, and granted summary judgment to respondents. *Id.* at B1-B18.

4. The court of appeals affirmed. Pet. App. A1-A44. The court acknowledged that Congress intended the term "claim" to have a broad scope, but it noted that, "[h]owever broadly 'claim' is understood, it is clear that the existence of a valid bankruptcy claim depends on (1) whether the claimant possessed a right to payment, and (2) whether the right arose before the filing of the petition." *Id.* at A40. "A claim exists," the court stated, "only if before the filing of the bankruptcy petition, the relationship between the debtor and the creditor contained all of the elements necessary to give rise to a legal obligation—'a right to payment'—under the relevant non-bankruptcy law." *Ibid.*

Applying that standard, the court concluded that the Coal Act's funding obligation did not implicate a pre-petition claim. It observed that coal mine operators' obligations to finance the Combined Fund arise exclusively out of the Coal Act and "cannot be considered a 'pay-back' for pre-petition labor. Coal Act premiums * * * do not constitute the maturation of a right to payment that vested at the time labor was supplied. [Petitioner's] liability to the Combined Fund is newly imposed by the Coal Act, not a revival of old contractual obligations." Pet. App. A41. Finding "the distinction between statutory and contractual obligations [to be] of paramount importance," the court concluded that "the existence of a prior contractual liability for retiree health benefits * * * does not render pre-petition the later statutory

imposition of retiree health care obligations by Congress." *Ibid.*[3]

ARGUMENT

The court of appeals correctly held that petitioner's obligation under the Coal Act to fund the UMWA Combined Benefit Fund is not a dischargeable pre-petition claim. That decision does not conflict with any decision of this Court or any other court of appeals. Further review therefore is not warranted.

1. Chapter 11 of the Bankruptcy Code permits the reorganization of a debtor under a plan that, when confirmed, discharges the debtor "from any debt that arose before the date of [the] confirmation" of the reorganization plan. 11 U.S.C. 1141(d)(1)(A). The Code defines a "debt" as a "liability on a claim," 11 U.S.C. 101(11), and defines a "claim," in turn, as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. 101(4)(A).

While the Code's definition of "claim" is quite broad, the court of appeals correctly concluded that petitioner's reorganization proceedings did not affect its obligation to fund the Combined Fund under the Coal Act. Under the Code, "a 'right to payment' is

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[3] The court of appeals also rejected petitioner's Fifth Amendment contentions, Pet. App. A17-A39, which petitioner has not renewed in this Court. A petition for a writ of certiorari raising a due process challenge to the Coal Act is pending before the Court in *Barrick Gold Exploration, Inc.* v. *Hudson*, No. 94-1938. In this Court, petitioner has raised a new separation of powers claim, which is discussed at pp. 12-13, *infra*.

nothing more nor less than an enforceable obligation." *Pennsylvania Dep't of Public Welfare* v, *Davenport*, 495 U.S. 552, 559 (1990). Petitioner had no "enforceable obligation" to finance the Combined Fund until the Coal Act took effect on February 1, 1993, well after petitioner filed its bankruptcy petition. Thus, no right to payment (or "claim") on behalf of the Combined Benefit Fund could have arisen before the Coal Act took effect, and petitioner's obligation to finance the Fund cannot be regarded as a pre-petition claim.

Petitioner maintains that the Coal Act, in essence, revives its retired miners' claim for health benefits, which did arise before the bankruptcy petition was filed. As the court of appeals observed, however, petitioner's obligation to the Combined Fund is "exclusively statutory in origin." Pet. App. A41. The fact that the *purpose* of the Coal Act is to provide funding for retired miners' health benefits does not alter the analysis, for the source of petitioner's liability to the Combined Fund is the Coal Act, not "a revival of old contractual obligations." *Ibid.*

The court of appeals' conclusion is consistent with the only other appellate decision that has addressed a similar issue, *In re Penn Central Transporation Co.*, 944 F.2d 164 (3d Cir. 1991), cert. denied, 503 U.S. 906 (1992). In *Penn Central*, the court concluded, under the old Bankruptcy Act, that the 1978 confirmation of the railroad's reorganization plan did not preclude lawsuits brought against the railroad under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.* The court of appeals observed in *Penn Central* that, prior to the enactment of CERCLA, "there was no statutory basis for liability

to be asserted"; therefore, the 1978 confirmation of the plan did not preclude the filing of a lawsuit under the 1980 law. 944 F.2d at 167.

Petitioner contends (Pet. 13-15) that there is disagreement among the courts of appeals as to whether the existence of a "claim" depends on whether liability becomes ripe under applicable non-bankruptcy law before the filing of the bankruptcy petition. The cases cited by petitioner, however, do not concern the situation presented in this case or in *Penn Central*, where the liability arose under a statute that was passed after the bankruptcy petition was filed. Those cases concern a different issue, namely, whether a plaintiff has a "claim" for bankruptcy purposes at the time that the bankruptcy petition is filed, when the plaintiff was allegedly injured by an action taken by the debtor before the bankruptcy petition was filed, but the injury did not become manifest until after the petition was filed. In the cases cited by petitioner, but unlike this one, the source of liability on which the claim was predicated existed at the time of the filing of the bankruptcy petition, although the plaintiff may not have been aware of the existence of the claim at that time.

For example, in *Lemelle* v. *Universal Manufacturing Corp.*, 18 F.3d 1268 (5th Cir. 1994), the plaintiffs sought damages from a mobile home manufacturer under a tort theory of negligent design. The mobile home was manufactured in 1970, the discharge from debts was ordered in 1983, and the plaintiffs' mobile home fire took place in 1985. See *id.* at 1271, 1274-1278. The case did not involve any new theory of liability that became available after the bankruptcy petition was filed, but rather involved a settled theory of tort law. Similarly, *Grady* v. *A.H. Robins Co.*, 839

F.2d 198 (4th Cir.), cert. dismissed, 487 U.S. 1260 (1988), involved a claim for damages based on injuries from the use of the Dalkon Shield, arising under a common law theory of liability that was established when the bankruptcy petition was filed, and *In re Hemingway Transport, Inc.*, 954 F.2d 1 (1st Cir. 1992), involved a claim under CERCLA, which was enacted before the bankruptcy petition in that case was filed.

Petitioner also contends (Pet. 13) that the decision below conflicts with *In re Chicago, Milwaukee, St. Paul & Pacific R.R.*, 3 F.3d 200 (7th Cir. 1993). *Chicago, Milwaukee* dealt with environmental claims that arose before the bar date in a railroad reorganization case. The district court and the court of appeals both held that claims brought pursuant to CERCLA were barred, since that statute was in effect at the time of the bar date but the relevant party with constructive knowledge of the toxic contamination did not file a claim before that deadline. *Id.* at 206-207. In contrast to its conclusion regarding the CERCLA claims, the district court in that case held that liability under the State of Washington's Model Toxics Control Act was not barred because that statute did not go into effect until after the relevant bar date. *Id.* at 207-208. The court of appeals remanded that part of the district court's decision for further proceedings, but it noted that "several courts have held that claims heard on a statute enacted after discharge in bankruptcy are not barred," *id.* at 208, and it cited *Penn Central* for that proposition, *ibid.* The court of appeals left open the issue presented in this case, and it did not hold broadly that "liability under post-bar date environmental laws is barred

when some liability existed before the bar date," as petitioner suggests (Pet. 13).

At bottom, petitioner's argument is a contention that Congress lacks the power to legislative retrospectively with respect to the health benefits of petitioner's retirees. But this Court has consistently upheld the authority of Congress to impose liability for past acts, even if its retrospective legislation "upsets otherwise settled expectations." *Pension Benefit Guaranty Corp.* v. *R. A. Gray & Co.*, 467 U.S. 717, 729-730 (1984); see *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15-16 (1976); *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224 (1986). Although petitioner had obtained, through litigation, an adjudication that it was no longer legally responsible for its retirees' health benefits, Congress rationally concluded that petitioner should join in contributing to the amelioration of the general crisis of health care costs in the coal mining industry. As the court of appeals observed, petitioner voluntarily joined in the industry's assumption of responsibility for retired miners' health benefits (Pet. App. A22), and "[i]t is surely proper for Congress to legislative retrospectively to ensure that the costs of a program are borne by the entire class of persons that Congress rationally believes should bear them." *United States* v. *Sperry Corp.*, 493 U.S. 52, 65 (1989).

2. Petitioner contends (Pet. 15-17) that the court of appeals' construction of the Coal Act violates the separation of powers doctrine, as construed in *Plaut* v. *Spendthrift Farm, Inc.*, 115 S. Ct. 1447 (1995), because the Act requires the reopening of the question of petitioner's liability for its retirees' health benefits after that matter was finally settled in the courts. That contention is without merit.

In *Plaut*, the Court held that Congress could not, by statute, require relitigation of a case that had been finally dismissed prior to the statute's enactment. The Court stated that "a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the courts said it was." 115 S. Ct. at 1457. The Coal Act, however, does not require relitigation of the controversy between petitioner and its retirees, nor does it attempt to change the law applicable to that controversy. Rather, the Coal Act creates an entirely new source of liability running solely between petitioner and the Combined Fund, and not between petitioner and the retirees who lost the earlier litigation. Cf. *Plaut*, 115 S. Ct. at 1461 (noting that Congress could create a "new cause of action for attorney's fees attributable to already concluded litigation" without violating separation of powers). Because the Coal Act does not reopen any concluded litigation, it presents no separation of powers problem under *Plaut*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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